

DATE: June 26, 1989

TO: John C. Leppert, Assistant to the City  
Manager

FROM: City Attorney

SUBJECT: Mission Bay - Fiesta Island - Sludge Beds -  
State Lands Commission Authority

By informal memorandum received from you on April 27, 1989, you asked, in effect, what controls over the Mission Bay tidelands are vested in the State Lands Commission.

Statutorily, the State Lands Commission retains little official control over tidelands which have been previously granted in fee to the City. However, the State does retain, by necessity, certain powers with regard to such granted tidelands, since all such tidelands must, under the State constitution, be held in trust for the public and can only be used for valid tidelands purposes.

Apparently, the State Lands Commission has, at least tentatively, concluded that the sludge beds located on Fiesta Island on a portion of the tidelands are not an appropriate use of tidelands. The specific grant of the Mission Bay tidelands to the City specifies, in part, that the lands are:

To be forever held by said city, and by its successors, in trust for the uses and purposes and upon the express conditions following, to wit:

(a) That said lands shall be used by said city and by its successors solely for the purpose of establishing, improving and conducting a harbor for small boats and for the construction maintenance and operation thereon of wharves, structures and appliances necessary or convenient for the protection or accommodation of commerce, navigation and fisheries and for the establishment and

maintenance of parks, playgrounds, bathhouses, recreation piers and facilities necessary or convenient for the inhabitants of said city; for educational, commercial, and recreational purposes, including the necessary streets, highways and other facilities convenient thereto; . . . (Emphasis added.)

While it could be argued that the sludge beds are "facilities

necessary or convenient for the inhabitants of the city," it would seem more appropriate to respond to the State Lands Commission that the City will cause the removal of the sludge beds as soon as feasible.

This conclusion is, in part, based upon the fact that the property involved is not only public tidelands but is also dedicated public park property, and while sludge beds could possibly qualify as a tidelands use, the present operation does not appear to be a valid "park and recreation" use.

With regard to the issue of income received through the operation of granted tidelands, it appears that excess revenues generated from one portion of tidelands granted to the City can be used on another portion of tidelands granted to the City. The case of State v. County of Orange, 134 Cal.App.3d 20 (1982) cited in the Lands Commission memorandum does not, in fact, hold that monies generated from one portion of granted tidelands may not be used on other granted tidelands.

JOHN W. WITT, City Attorney

By

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